

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 20

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte MATTHEW LEVINE

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Appeal No. 2004-0609  
Application No. 09/900,787

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HEARD: APRIL 27, 2005

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Before HAIRSTON, BARRETT, and MACDONALD, Administrative Patent Judges.  
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 8, 10 through 14 and 16. Claims 9<sup>1</sup> and 15 are objected to as being dependent upon rejected base claims, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

The disclosed invention relates to a method of programming a chart recorder. A marking pen in the chart recorder moves relative to visible options on the surface of the chart that relate to the programming of the chart recorder. Information relating to the

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<sup>1</sup> Claim 16 depends from objected to claim 9.

locations of surface positions (e.g., the visible options) is stored in the chart recorder. The chart recorder is programmed by correlating the position of the marking pen relative to the chart during the selection of an option.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A method of programming an instrument of the type wherein a marking implement is used to mark a surface, the method comprising the steps of:

providing a surface including visible options relating to the programming of the instrument;

storing information relating to the location of surface positions accessible by the marking implement;

moving at least the marking implement relative to the visible options for selection purposes; and

programming the instrument by correlating the position of the implement during the movement thereof to determine the options selected.

The references relied on by the examiner are:

Watanabe	4,025,838	May 24, 1977
Ishiguro et al. (Ishiguro)	4,836,742	June 6, 1989
Levine	5,978,000	Nov. 2, 1999

Claims 1 through 8 and 11 through 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Levine.

Claims 10 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Levine in view of Ishiguro and Watanabe.

Reference is made to the final rejection (paper number 6), the brief (paper number 10) and the answer (paper number 12) for the respective positions of the appellant and the examiner.

### OPINION

We have carefully considered the entire record before us, and we will sustain the anticipation rejection of claims 1 through 8 and 11 through 14, and sustain the obviousness rejection of claims 10 and 16.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Appellant argues (brief, pages 3 and 4) that Levine does not disclose any of the method steps of claim 1.

We disagree. Levine discloses a method of programming a chart recorder (Figure 1). A marking pen 108 is used to mark the surface of recording paper 102 with visible options in the form of set points 124 and 126 that relate to the programming of the instrument. As stated by Levine (column 1, lines 57 through 62), "the invention takes the

form of a circular chart recorder, and includes the ability to program into the chart recorder apparatus proper a plurality of set points which are advantageously made visually apparent on the chart recorder paper” (emphasis added). Levine additionally states (column 1, lines 62 through 67) that “[t]he combined controller/recorder of the invention further includes driver electronics responsive to the program set points, which may be used to directly control equipment in accordance with the set points, or, alternatively, to provide other control functions, such as the activation of higher power switches, and so forth” (emphasis added). The set points 124 and 126 were made by the marking pen 108 during a setup phase (column 2, line 60 through column 3, line 2), and the set points are accessible by the marking pen 108 during the operation of the chart recorder. A non-volatile memory (e.g., EEPROM) stores information relating to the set point surface positions (column 3, lines 48 through 50). In an operational mode, the marking pen 108 is moved relative to the set point visible options 124 and 126 for selection purposes. Stated differently, if the marking pen 108 moves beyond either set point 124 or 126, the chart recorder is programmed to generate a control signal to perform a specific function (e.g., turn indicator lights “on and off in accordance with the reaching of each set point”) (column 3, lines 19 through 34). With respect to the last step in claim 1, Levine teaches programming the chart recorder by correlating the position of the marking pen 108 relative to the chart recorder paper 102 during the selection of an optional set point.

Thus, the anticipation rejection of claim 1 is sustained because Levine teaches all of the method steps of this claim. The anticipation rejection of claims 2 through 8 is sustained because appellant has chosen to let these claims stand or fall with claim 1 (brief, page 3).

The anticipation rejection of claim 11 is sustained because the "printed parameters" in Levine are the two set points 124 and 126. The anticipation rejection of claims 12 through 14 is sustained because appellant has chosen to let these claims stand or fall with claim 11 (brief, page 3).

The obviousness rejection of claims 10 and 16 is sustained because appellant has not presented any patentability arguments for these claims.

#### DECISION

The decision of the examiner rejecting claims 1 through 8 and 11 through 14 under 35 U.S.C. § 102(b) is affirmed, and the decision of the examiner rejecting claims 10 and 16 under 35 U.S.C. § 103(a) is affirmed.

AFFIRMED

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

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